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The Concept of Medical Treatment and Guidelines for Physicians in Islamic Perspective

1. **Dr. Fazli Dayan**
   Assistant Professor, IPFP, Department of Shariah & Law,
   Islamia College Peshawar
   Email: dr.dayan@icp.edu.pk, fazli.dayan@iiu.edu.pk
2. **Prof. Dr. Nisar Muhammad**
   Dean Faculty of Religious and Legal Studies,
   Islamia College Peshawar
   Email: nisaricp@gmail.com, drnisar@icp.edu.pk
3. **Dr. Muhammad Zahid**
   Associate Professor Islamic studies
   Islamic Khyber Medical College, Peshawar
   Email: zahid_umar1966@yahoo.com

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The Concept of Medical Treatment and Guidelines for Physicians in Islamic Perspective

By Dr. Fazli Dayan, Prof. Dr. Nisar Muhammad, and Dr. Muhammad Zahid

Abstract

In fact, good health is the ultimate end of medicine for everyone through medical treatment. Islam does approve necessary measures to sustain good health. Thus its

sustenance senses the subjects to avoid undue pains and sufferings. For this purpose medications and medical treatment is measured as a recognized tool in Islamic law. Therefore, this research paper reveals that numerous Muslim scientists worked on different branches of science, and hence the Muslim physicians execute one of the most complicated "eye surgery" almost six hundred (600) years earlier than the European physicians. Indeed, it is the Muslim scientists who discovered the 'force of gravity', 'blood circulation', 'laws of motion'. Factually, they developed the 'theory of evolution', 'differential and integral mathematics' and many more in the field of science. Consequently, the words of Campbell in this regard are very important to note that: "the European medical system is Arabian not only in origin but also in its structure", which signify that "Muslim scientists are directly responsible for the European renaissance". Resultantly, this paper argues that 'medical treatment is an obligation if one's life is in danger' since preservation and protection of life is one of the primary objectives of Shariah. Although, in extraordinary circumstances, seeking medical treatment is highly encouraged in Islam, and an ill person is supposed to pursue medical treatment because Allah almighty has made both the illness and the cure.

Keywords: Medical Treatment, Guidelines, Physicians, Competency, Religion, *Shariah*

Introduction

Before outlining medical treatment in Islam, it is worth noting to shed some light on the science of medicine. Since, good health is the ultimate end of medicine for everyone through medical treatment.[1] Commenting on science of medicine, Muhammad Iqbal khan maintained: "knowledge of medicine is one of the most famous and best-known facets of Islamic civilization".[2]

Numerous Muslim scientists worked on different branches of medical science, such as, al-Rāzī devoted an entire book as a critique of Galen's anatomy. In his view the work of

[1] C. Ben Mitchell, et al. *Biotechnology and human good*, Georgetown University Press, Washington, D.C. 2007, p. 112

[2] Khan, Muḥammad Iqbal, *Medical ethics: An Islamic Perspective*, Institute of Policy Studies, Islamabad, Pakistan, 2013, p. 22

'Paracelsus'[3] is "insignificant compared to the vast volumes of medical writings and original findings accomplished by the medical giants of Islam".[4]

Remarkably, the Muslim physicians execute one of the most complicated "eye surgery" almost six hundred (600) years earlier than the European physicians. Indeed it is the Muslim scientists who discovered the 'force of gravity', 'blood circulation', 'laws of motion'. Factually, they developed the 'theory of evolution', 'differential and integral mathematics' and many more in the field of science.[5]

The words of *Campbell* in this regard are very important to note that: "the European medical system is Arabian not only in origin but also in its structure", which signify that "Muslim scientists are directly responsible for the European renaissance".[6] Thus, the work of Abd al-Malik ibn Quraib al-Aṣmaʿī, died. 828, al-Khwārizmī, Jābir bin Hayyan, Ibn Sīnā, Ibn Zuhur,[7] Ibn Nafīs,[8] Ziā al-Dīn Abū Muḥammad ʿAbdllāh bin Aḥmad al-Mālaqī, known as Ibn al-Bayṭār, died. 1248 Ibn al-Bayṭār, and many others are very important.

Having Medical Treatment in Islam

The issue of medical treatment debated in Islamic law and jurisprudence, jurists; like, al- Ghazālī, Ibn Taymiyyah, and some other spiritual clerics (*sūfī's*) were of the view that; "it is better for a sick person to live without medical treatment, since it is a sign of piousness, and also a humble acceptance of Allah's appreciation".[9] Even Ibn Taymiyyah along with other spiritual clerics are very positive approach towards health care, but they suggested that patience is the best option, since the ḥadīth indicates, in which the Prophet Muhammad (peace be upon him) said to a lady, that she may be patient towards her illness. Further, they are of the view that, medication by unlawful substance is not preferable. Thus,

[3](The ophrastus Philippus Aureolus Bombastus von Hohenheim, known as Paracelsus, died in 1541, was a "Swiss physician who introduced treatments of particular illnesses based on his observation and experience; he saw illness as having an external cause–rather than an imbalance of humors–and replaced traditional remedies with chemical remedies").

[4] Khan, Muḥammad Iqbal, *Medical ethics: An Islamic Perspective*, Institute of Policy Studies, Islamabad, Pakistan, 2013, p. 23

[5] Khan, Muḥammad Iqbal, *Medical ethics: An Islamic Perspective*, Institute of Policy Studies, Islamabad, Pakistan, 2013, p. 23

[6] Ibid.

[7] Ibn Zuhur was (Abū Marwān 'Abd al-Malik bin Abī al-'Alā' Ibn Zuhur, known as, 'Avenzoar', died. 1162), a Muslim 'physician and a famous surgeon'.

[8] He was ('Alā al-Dīn Abū al-Hassan 'Alī bin Abī Hazm al-Qarshī al-Dimashqī, known as Ibn al-Nafīs, died. 687.H), a renowned physician, and expert in medicine. He was also considered as second 'Ibn Sīnā', moreover he was the first who describe the "pulmonary; (related to lungs and heart) circulation of blood".

[9] Ibn al-Jawzī, (Abū al-Faraj ʿAbd al-Raḥmān Abī Hassan ʿAlī bin Muḥammad al-Jawzī al-Ḥanbalī, died. 597.H), *Tblīs Iblī*s, Dār al-Iblāgh, Lahore, Pakistan, 2007, pp. 422-423.

if in case no other alternatives available, Muslim are required to be patient with his illness. Additionally, medical treatment and medication is evident from many traditions, but one of the narration which is reported from 'Umar bin 'Ubaidullah bin Ma'mar; "once complaining about his eyes during *ihrām*, so he asked Abān bin 'Uthmān about it", and he said: "bandage it with some aloes", since "I heard 'Uthmān bin Affān mentioning that the Messenger" of Allah (peace be upon him), said: "bandage it with aloes"[10] However, Ibn al-Jawzī stated that, Abū Ja'far al-Tabarī considered those who has anti-medication views, and held that "factually those are the *Sufī's* (spiritual clerics) who have no intelligence". Basically, their viewpoint is based on the Prophetic traditions in which the Prophet Muhammad (peace be upon him) termed illness brings purity/piousness, He (the Prophet) said that;

مَا مِنْ مُسْلِمٍ يُصِيبُهُ أَذًى شَوْكَةٌ فَمَا فَوْقَهَا، إِلاَّ كَفَّرَ اللَّهُ بِهَا سَيِّئَاتِهِ، كَمَا تَحُطُّ الشَّجَرَةُ وَرَقَهَا. [11]

> The Prophet (peace be upon him) said that; "no Muslim is afflicted with any harm/disease, even if it was the prick of a thorn, but Allah expiates his sins because of (the sickness), as a tree sheds its leaves, sickness removes sins like the tree sheds its leaves".
>
> Prophet Muhammad (P.B.U.H) said to another place that:

مَا مِنْ مُسْلِمٍ يُصِيبُهُ أَذًى، إِلاَّ حَاتَّ اللَّهُ عَنْهُ خَطَايَاهُ، كَمَا تَحَاتُّ وَرَقُ الشَّجَرِ[12]

> "No Muslim is afflicted with any harm, but Allah will remove his sins as the leaves of a tree fall down"

While another *ḥadīth* in which the Prophet Muhammad (peace be upon him) said to a lady;

الْمَرْأَةُ السَّوْدَاءُ أَتَتِ النَّبِيَّ صلى الله عليه وسلم فَقَالَتْ إِنِّي أُصْرَعُ، وَإِنِّي أَتَكَشَّفُ فَادْعُ اللَّهَ لِي. قَالَ " إِنْ شِئْتِ صَبَرْتِ وَلَكِ الْجَنَّةُ وَإِنْ شِئْتِ دَعَوْتُ اللَّهَ أَنْ يُعَافِيَكِ ". فَقَالَتْ أَصْبِرُ. فَقَالَتْ إِنِّي أَتَكَشَّفُ فَادْعُ اللَّهَ أَنْ لاَ أَتَكَشَّفَ، فَدَعَا لَهَا

> "A black lady came to the Prophet (peace be upon him) and said, 'I get an attacks of epilepsy, and my body become uncovered'; so please invoke Allah almighty for me

[10] Al-Muslim,*Ṣaḥīḥ Muslim,* in book reference: book no. 15, chapter no. 12, ḥadīth no. 97
[11] Al-Bukhārī*, Ṣaḥīḥ al Bukhārī*, in book reference: book no. 75, chapter no. 3, ḥadīth no. 8, English translation: vol. no. 7, book no. 70, ḥadīth no. 551
[12] Al-Bukhārī*, Ṣaḥīḥ al Bukhārī*, in book reference: book no. 75, chapter no. 2, ḥadīth no. 7, English translation: vol. no. 7, book no. 70, ḥadīth no. 550.

(to be recovered)', the Prophet (peace be upon him) said; (to her) "If you wish to be patient, then you will have (enter to) paradise; and if you wish a cure, (so then) I will invoke Allah almighty to cure you", she (the sick lady) said; 'I will remain patient', and (she) added; 'but (because of the disease) I become uncovered, so please invoke Allah almighty that I may not become uncovered', so he (the Prophet) invoked Allah for her"[13]

Further, 'Āisha (May Allah be please with here) narrated that, "I asked, Prophet (peace be upon him) about plague (an epidemic)", so he (the Prophet) told me that;

أَنَّهُ عَذَابٌ يَبْعَثُهُ اللَّهُ عَلَى مَنْ يَشَاءُ، وَأَنَّ اللَّهَ جَعَلَهُ رَحْمَةً لِلْمُؤْمِنِينَ، لَيْسَ مِنْ أَحَدٍ يَقَعُ الطَّاعُونُ فَيَمْكُثُ فِي بَلَدِهِ صَابِرًا مُحْتَسِبًا، يَعْلَمُ أَنَّهُ لاَ يُصِيبُهُ إِلاَّ مَا كَتَبَ اللَّهُ لَهُ، إِلاَّ كَانَ لَهُ مِثْلُ أَجْرِ شَهِيدٍ۔[14]

"It was a torment-wrath (punishment) sent by Allah on whom he wills, and Allah made it as a source of mercy for the believers, (so) for the one who stays patiently in his land during the time of an epidemic (plague), hoping for Allah's reward, and believing that nothing will befall except what Allah has written for him, (thus), he will get the (same) reward of a martyr."

If you prefer to be patient with your illness, (resultantly) you will enter paradise, but if you want me to pray for you, I will pray Allah almighty to cure your illness, however, this ḥadīth indicates guidelines in case of an epidemic, which is likely to be spread-out.

Moreover, al-Qardāwī stated: "some of the companions were also reported that they were not seeking any medical treatment at the time when they were sick/ill".[15] However, he was of the view, that 'medical treatment is an obligation if one's life is in danger'.[16] This is unanimously held, i.e. established through consensus that medical treatment does not contradict self-denial, (*tawakkūl*), but medical treatment ranges from (*tawakkūl*).[17] Since preservation and protection of life is one of the primary objectives of *Shariah*. Although

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[13] Al-Bukhārī, *Ṣaḥīḥ al Bukhārī*, in book reference: book no. 75, chapter no. 6, ḥadīth no. 12, English translation: vol. no. 7, book no. 70, ḥadīth no. 555; see also, Al-Muslim,*Ṣaḥīḥ Muslim,* in book reference: book no. 45, chapter no. 14, ḥadīth no. 69, English translation: book no. 32, ḥadīth no. 6245;
[14] Al-Bukhārī, *Ṣaḥīḥ al Bukhārī*, in book reference: book no. 75, chapter no. 6, ḥadīth no. 12, English translation: vol. no. 7, book no. 70, ḥadīth no. 555; see also, Al-Muslim,*Ṣaḥīḥ Muslim,* in book reference: book no. 45, chapter no. 14, ḥadīth no. 69, English translation: book no. 32, ḥadīth no. 6245;
[15] Al-Qardāwī, Yūsuf ʿAbdallāh al-Qardāwī, *Fatāwā M'āṣira*, Mansrūra, Dār al-Wafā, 1994, vol. 2, p. 528
[16] Ibid.
[17] Ibn Al-Jawzī, *Tblīs Iblīs*, Dār al-Iblāgh, Lahore, Pakistan, 2007, pp. 422-423

seeking medical treatment is highly encouraged in Islam, and an ill person is suppose to pursue medical treatment, because Allah almighty has made both the illness and the cure.

In fact, al-Ghazālī when talks about medication in his book: *ihyā' 'ulūm al-dīn*, maintained; "Allah almighty had arranged all causes and had established his custom regarding them".[18] So, he concludes his discussion signifying that; "medicaments were useful, and also permissible and compatible with *tawakkūl*", as Ibn al-Jawzī stated.[19] The final arguments of al-Ghazālī marked that; "there is nothing wrong in using medicaments, but however, it should not be forgotten that drugs/medicine itself having no inherent curing qualities, rather the cure/healing rests in Allah's hand who caused the drugs to have the desired effect each time they were applied".[20]

Indeed, the medicine and medical treatment are merely means towards restoration of good health, like the water and food. But it should be remembered that it was not actually the water and food which quench thirst or elevate hunger, rather, factually it is the hidden wisdom of Allah almighty behind it. Thus, in the same manner, no one can reject the similarity of medicine to food and drink, because, its rejection and denial will lead to greater harm.

Similarly, in Christian theology; "men and women of faith will know that the taint of original sin cannot be eliminated by application of the biomedical technology, neither will they seek redemption fashioned by humanity, rather, they know that the gifts of science and technology are good only, if they make humanity good and more cognizant of God's creative presence in each wonder science uncovers", in this way, the believers are not likely to surrender their faith or fate to biotechnologists".[21] This does however will be an extreme stupidity, if an ill person rejects medication even though with reason and knowledge, thus, it is nothing but succumbing to afflictions and diseases. Only an ignorant of Allah's wisdom can give up the means and ways which the Lord Him-self recognized. Hence, commands for having food rendered a convincing mean towards elevation of hunger; drinking liquid i.e. water etc, meant for quenching thirst; and using medicine is intended a shield against ailments.

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18 Al-Ghazālī, *Ihyā' 'Ulūm* al-Dīn, Cairo, 1986, vol. 4, pp. 248-251
19 Ibn al-Jawzī, *Tblīs Iblī*s, Dār al-Iblāgh, Lahore, Pakistan, 2007, pp. 422-423
20 Al-Ghazālī, *Ihyā' 'Ulūm* al-Dīn, Cairo, 1986, vol. 4, pp. 248-251
21 C. Ben Mitchell, et al. *Biotechnology and human good*, Georgetown University Press, Washington, D.C. 2007, p. 132

Assertively, in Islam sound and good health is considered as part of one’s obligations, and its sustenance senses the subjects to avoid from undue pains and sufferings. Obviously, various verses of the Holy *Quran* indicated that physical diseases that attack on the human body, might affect the commands of *Shariah*.

It is said in Holy Quran that:

لَيْسَ عَلَى الْأَعْمٰى حَرَجٌ وَّلَا عَلَى الْأَعْرَجِ حَرَجٌ وَّلَا عَلَى الْمَرِيْضِ حَرَجٌ [22]

Above mentioned Ayat refers to the aliments that can cause harm to one’s body and health. So, Allah almighty has permitted the ill person to break his fast due to sickness.

Equally, Allah has allowed the travelers too, to protect their health for the purpose of traveling, because without having enough energy one cannot travel, since the efforts require nourishment to sustain energy. Hence, Allah almighty has given an exemption to the travelers to meet their requirements.

Allah Almighty Said in Holy Quran:

اَيَّامًا مَّعْدُوْدٰتٍ ۭ فَمَنْ كَانَ مِنْكُمْ مَّرِيْضًا اَوْ عَلٰي سَفَرٍ فَعِدَّةٌ مِّنْ اَيَّامٍ اُخَرَ ۭ [23]

[Observing Saum (fasts)] for a fixed number of days, but if any of you is ill or on a journey, the same number (should be made up) from other days.

In the same way, Allah has allowed the sick and ‘those who are suffering from lice or sensitive scalp’; to shave their head while wearing *ihrām*, and even they can keep their heads unshaved after removing the *ihrām*, since it can cause severity in harm which is to be redressed.

In this regard Allah said in Holy Quran:

وَاَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلّٰهِ ۭ فَاِنْ اُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ ۚ وَلَا تَحْلِقُوْا رُءُوْسَكُمْ حَتّٰى يَبْلُغَ الْهَدْيُ مَحِلَّهٗ ۭ فَمَنْ كَانَ مِنْكُمْ مَّرِيْضًا اَوْ بِهٖٓ اَذًى مِّنْ رَّاْسِهٖ فَفِدْيَةٌ [24]

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[22] *Al Quran*, Al-Fath 48:17
[23] *Al Quran*, Al-Baqarah, 2:184
[24] *Al Quran*, Al-Bakarah 2:196

"And fulfil the pilgrimage and 'Umra for Allah. And if ye be besieged, offer whatsoever offering be easy, and shave not Your heads, until the offering reacheth its destination. Then whosoever of you sick or hath hurt in his head, for him is a ransom."

According to the following Hadith it is said that:

حَدَّثَنِي عَنْ مَالِكٍ، عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي مَرْيَمَ، . أَنَّهُ سَأَلَ سَعِيدَ بْنَ الْمُسَيَّبِ عَنْ ظُفْرٍ، لَهُ انْكَسَرَ وَهُوَ مُحْرِمٌ فَقَالَ سَعِيدٌ اقْطَعْهُ . وَسُئِلَ مَالِكٌ عَنِ الرَّجُلِ يَشْتَكِي أُذُنَهُ أَيَقْطُرُ فِي أُذُنِهِ مِنَ الْبَانِ الَّذِي لَمْ يُطَيَّبْ وَهُوَ مُحْرِمٌ فَقَالَ لاَ أَرَى بِذَلِكَ بَأْسًا وَلَوْ جَعَلَهُ فِي فِيهِ لَمْ أَرَ بِذَلِكَ بَأْسًا . قَالَ مَالِكٌ وَلاَ بَأْسَ أَنْ يَبُطَّ الْمُحْرِمُ خُرَاجَهُ وَيَفْقَأَ دُمَّلَهُ وَيَقْطَعَ عِرْقَهُ إِذَا احْتَاجَ إِلَى ذَلِكَ۔ [25]

Muḥammad bin ʿAbdallāh bin Abī Maryam; "once asked Sa'eed bin al-Mussaib about a broken nail while he was in *ihrām*"? Sa'eed said: "cut it off". Mālik was asked; "whether someone during *ihrām* having problem in an ear, could he (the patient) use medicinal oil for dropping into his ears"? So he (Mālik) said: "I do not see any harm in it, and if he uses to put it into his mouth, even then, I still would not see any harm in it". Malik (further) said; "there was no harm, if someone in *ihrām* lancing an abscess that he had, or a boil, or cutting a vein, incase if he needed to do so."

Ibn al-Qayyim mentioned ten cases, which can cause severe illness if these are not properly tackled. The ten cases are namely; "blood, sperm, urine, excrement, air (breath), vomiting, sneezing, sleeping, hunger and thirst", so in his view, Allah almighty has allowed to shave his head in case, he has a skin problem, equally then, in these mentioned cases, one is allowed otherwise of the normal rules due to illness.[26] He further argues, that the verse of *sūrah an-nisā'* "sets a precedent for every type of precautionary and preventive measures that protects the body from harms, illness and adversity".[27]

Guidelines for Physicians in Islam

Islam is a complete code of life, and a religion of ease, facility and convenience. Noticeably, no aspect of human life remained untouched and lift unattended from *Shariah*. Thus, human life generally and their health particularly is one of the main objectives of the

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[25] Mālik bin Anas, *Al-Muwaṭṭā*, Arabic reference: book no. 20, ḥadīth no. 799, English reference: book no. 20, ḥadīth no. 97

[26] Ibn al-Qayyim, *the Prophetic Medicine: Al-Tībb al-Nabawī.* Abd el-Qader Abd el-Azeez, Dār al-Gḥadd al-Jadeed, al-Mansūrā, Egypt, 2003, p. 8.

[27] Ibid, at p. 9.

Islamic law. So, Islamic law regarded every activity in connection to the medical experiment, advancement in medicine and medical technology in order to attain one of its basic objectives. However, the morality of medical experiments itself depends upon the goal of such an activity. The importance of medical experiments or science of medicine for the betterment of society comes first due to the facts that the sanctity of life and possibility of good health along with peaceful living standards is the main theme of the objectives of *Shariah*.[28]

Certainly, in the context of medical treatment and medication various issues arise, therefore, the jurists have guided physicians to hold those standards in preview of Islamic law and jurisprudence. Since, there may be a situation where in case of lethal diseases, for instance, where a HIV test comes positive, or when a patient having AIDS not only hides his ailment, but also insists upon his physician to keep this dangerous information secret, although, this is a serious disease which may affect the public at large, if concealed from others,[29] thus, in such a situation what is required from the physicians? Whether an HIV positive patient or a person facing AIDS, or any other lethal diseases, which is likely to be spread on, if concealed from others–whether the infected person has an absolute right to privacy in this regard? Or whether physician is bound by *Shariah* to keep this information secret? Or whether physicians are required to disclose severe ailment in the best interests of patient's family, relatives, and for the public/society at large?[30]

The jurists and scholars of the Islamic law and medical ethics (In the context of medical ethics, "patient's privacy must be protected, however, if physicians deem that such disease will affect the health of others humans and society, then physicians can expose or allowed to provide information to others in order to protect their health"[31]) have responded to these issues, so, they consider it as '*comparative harm*'. Therefore, almost all the scholars of the Islamic law have substantially said; "in case of greater harm arising out of concealment of a lethal disease, such as; HIV/AIDS, etc., which is likely to spread in the society, and might affect other human beings, then the ailment, its nature, consequences and

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[28] Qaiser Shahzad. *Biomedical Ethics: Philosophical and Islamic Perspectives*, IRI, IIU, Islamabad, Pakistan, 2009, p. 154

[29] *Islamic Shariah Guidance on AIDS*, Islamic Fiqh Academy, New Delhi, India, 2005, pp. 25-27

[30] Ibid; & Qaiser Shahzad. *Biomedical Ethics: Philosophical and Islamic Perspectives*, IRI, IIU, Islamabad, Pakistan, 2009, pp. 150-264

[31] Pakistan Medical and Dental Council, "*Code of Ethics: of Practice for Medical and Dental Practitioner*", part 2, rule no. 27:(a-f), p. 11

proper caution/care should be disclosed to others, in the larger interests of mankind. Since, the physician has not been restrained by the *Shariah* to keep such a disease/ailment secret, rather, he/she is required not to give an ear to the lame requests of their patients, and is bound to disclose the aliments. It is, however, the duty of the physician to give proper treatment and care to their patients as much as they can. It is further recommended, that physicians should give them precautionary and preventive information to the patient, his family and other related members of the society.[32]

Certainly the disclosure of lethal diseases, like HIV/AIDS to others, might result in curtailment of privacy right of the patient. But, in such certain situations, it does not matter, since, the medical ethics required to disclose such information, thus, the action of disclosing of one's secret regarding the severity of disease, is not considered to be a sin on the part of a physician.[33] Rather, as per the legal maxim; 'specific harm/injury must be tolerated to avoid general harm'[34], as discussed earlier. Although, disease and its cure comes from Allah almighty, to know who is the most tolerant and righteous? So, the best example quoted in the Holy *Quran*; when Ayūb (*ʿalayhi al-salām*); was afflicted with untold disease, but upon his prayer, Allah almighty restored his health.

وَاَيُّوۡبَ اِذۡ نَادٰى رَبَّهٗۤ اَنِّىۡ مَسَّنِىَ الضُّرُّ وَاَنۡتَ اَرۡحَمُ الرّٰحِمِيۡنَ ۔ فَاسۡتَجَبۡنَا لَهٗ فَكَشَفۡنَا مَا بِهٖ مِنۡ ضُرٍّ ۔ [35]

> And (remember) Ayyub, when He cried to his Lord, "Truly distress has seized me, but Thou art the Most Merciful of those that are merciful. So We listened to him: We removed the distress that was on him.

Patients-Physician Relationship and Islamic Law

Numerous imperative ethical issues arise in the course of patients-physician relationship due to advancement in the field of medical science. Most of them related to medical technology, since, it has changed patients-physician relationship in many ways, but

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[32] *Islamic Shariah Guidance on AIDS*, Islamic Fiqh Academy, New Delhi, India, 2005, pp. 25-27
[33] Ibid.
[34] Al-Majallah, *Mujallat al-Aḥkām al-'Adlīyah*, Qadeemī Kutub Khānah, Karachi, Pakistan, article no. 26, p. 19
[35] Al-Quran, Al-Anbiya, 21:83-84

that is not in the scope of our research here, however, the issue of qualified physician along with the issue of confidentiality will be tackled here.[36]

Physician's Competency

Obviously, it is the utmost requirement of the medical ethics that only an expert and duly qualified person can practice medicine.[37] The competency of qualified physicians has been authenticated by established credible authorities both nationally and internationally. Mainly, those individuals upon the completion of their medical course work and house-job (practice) can get registration, and then a certificate/license issued by the authorities concerned, and to whom certificate is issued by the authority is said to be an eligible physician. Thus, after the fulfillment of mandatory and necessary requirements, he/she may legally authorize to undertake medical treatment of the patients.

Definitely, in Islamic law, it is not permissible to treat patients without competence. Bearing a license or any other legal documents to practice medicine is not only mandatory in medical ethics but also in Islamic law. The story of al-Muqtadīr bi-llāh (Abū'l-Faḍl Jaʿfar bin Aḥmad al-Muʿtaḍid, died: 320.H,–the Abbāsī caliph), is mentioned in the classical books, that he ordered to his physician: Sanān bin Thābīt al-Qurra al-Ḥarrānī to examine the physicians of Baghdad, and also to grant/issue a license to practice medicine to those whose knowledge satisfy him to be fit/able for medical profession. Thus, the order of al-Muqtadīr is worth mentioning, since those physicians without having a license has no legal authority to practice medicine, and in case of any error/harm caused by them will be referred to *al-Muhtasīb*: (the then like interior ministry, or Ombudsman) to probe into the matter. Further, no one will be permitted to practice medicine, unless licensed by his (Caliph's) personal physician Sanān bin Thābīt. Hence, Sanān bin Thābīt at that time was considered a medical authority, like the medical council. For further details.[38] The Prophet Muhammad (peace be upon him) said;

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[36] *Juristic Decisions on some Contemporary Issues*, Islamic Fiqh Academy, New Delhi, India, 2014, p. 249; see also, Qaiser Shahzad. *Biomedical Ethics: Philosophical and Islamic Perspectives*, IRI, IIU, Islamabad, Pakistan, 2009, p. 245

[37] Pakistan Medical and Dental Council, "*Code of Ethics: of Practice for Medical and Dental Practitioner*", part 2, rule no. 7:(1-2), p. 3

[38] Al-Tantāwī, Muḥammad Sayyid al-Tantāwī, "*Donation, Sale, and Un-bequeathed Possession of Human Organs*", Legal paper presented to the 'Islamic Organization for Medical Sciences', Kuwait, April 18th-21st, 1987, available at: http://islamset.net/bioethics/organ/index.html, (last accessed on: 10-06-2017).

مَنْ تَطَبَّبَ وَلاَ يُعْلَمُ مِنْهُ طِبٌّ فَهُوَ ضَامِنٌ۔ [39]

"Anyone who does not know, and practice medicine, he will be held responsible (i.e. liable to compensation)".

Prophet Muhammad (P.B.U.H) also said that:

أَيُّمَا طَبِيبٍ تَطَبَّبَ عَلَى قَوْمٍ لاَ يُعْرَفُ لَهُ تَطَبُّبٌ قَبْلَ ذَلِكَ فَأَعْنَتَ فَهُوَ ضَامِنٌ۔ [40]

"Any physician who practices medicine, when he was not known as a practitioner before that, and causes harm (to the patient), he will be held responsible (for his negligence)"

The '*Indian fiqh academy*' maintained, "during the course of treatment, if an individual (hereby calling himself a physician) is not permitted as per *Shariah* to practice medicine or medical treatment, and however, while doing so, if a major harm is caused to the patient's health, he (the physician) shall be liable to penalty and punishment".[41] Since, in Islamic law, and as well as in medical ethics, it is a prerequisite that he/she may be eligible before he/she practice medicine. The words of Prophetic tradition; "Allah dose not sent any disease until he sent its cure" signifies an encouragement to study the science of medicine to cure aliments, aiming that might be beneficial for every sick individual.[42]

Indeed, jurists of the Islamic law, particularly those who written on the Prophetic medicine or medical science holds that; "trained physician was the best person to diagnose and treat a disease".[43] The person who does not have knowledge of medicine and cause harm to any person/patient will be held responsible.[44]

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[39] Abū Dāwūd, *Sunan Abī Dāwūd*, book no. 41, chapter no. 1669, ḥadīth no. 93, English translation: book no. 40, ḥadīth no. 4569; see also, Ibn Mājah, Sunan *Ibn Mājah,* Arabic reference: book no. 31, ḥadīth no. 3595, English reference: vol. no. 4, book no. 31, ḥadīth no. 3466

[40] Abū Dāwūd, *Sunan Abī Dāwūd*, in book reference: book no. 41, chapter no. 1669, ḥadīth no. 94, English translation: book no. 40, ḥadīth no. 4570

[41] *Juristic Decisions on some Contemporary Issues*, Islamic *Fiqh* Academy, New Delhi, India, 2014, p. 249

[42] Al-Dhahabī, (Muḥammad bin Aḥmad bin `Usmān bin Qayyīm Abū ʿAbdallāh Shams al-Dīn al-Dhahabī al-Shāfiʿī, died. 1348.H), *Al-Tībb al-Nabawʿī.* ed. (Shayyīd Jamālī), Cairo, p. 156

[43] Ibid, at, p. 158

[44] Ibn al-Qayyim, *the Prophetic Medicine; Al-Tībb al-Nabawʿī.* Abd el-Qader Abd el-Azeez, Dār al-Gḥadd al-Jadeed, al-Mansūrā, Egypt, 2003, p. 168; see also, Al-Dhahabī, *Al-Tībb al-Nabawʿī.* ed. (Shayyīd Jamālī), Cairo, p. 158

Ibn al-Qayyim held that the Prophetic *ḥadīth*, regarding responsibility of unprofessional and unqualified physician, requires ignorant physician has to pay-off their mistakes. Since, he has practiced a profession for which he was not eligible or not qualified.[45] Thus, in this sense, it is nothing more than cheating and deceiving innocent people. Therefore, jurists have unanimously held those physicians responsible who were unqualified, unprofessional and ignorant, for the risks caused to the patient's health.[46] However, if the patient concur with a physician whom he knew to be an ignorant of medicine or whose knowledge is defective, thus, in such case the physician will not be held liable for the damage he caused to the patient's health.[47]

Liability of Incompetent/Unqualified Physicians in Islamic Law

Notably, Ibn al-Qayyim, categorized the patients-physician relationship in regard to their knowledge, profession, agreement and ignorance. Such as,

Firstly): if physicians were duly qualified and known to be a competent person, where, he while treating his patient any mistake and the patient dies during treatment or any other injury caused to him. Thus, in such case he will not be held responsible.[48]

Secondly): If a competent physician commits any mistake, and resultantly the patient suffers any damage or loss, so, in such case he will be held responsible, and the physician will be required to pay him damages either from his own sources or from the state treasury.[49]

Thirdly): When a competent physician treating a patient without his permission or without obtaining permission from his guardian (for the risks involved in the treatment). As a result, if any harm or damage caused to the patient's health or life, then he/she (the physician) will be held responsible. For the reason he has exceeded from his authority and limits. However, if he has given proper permission to operate, and without his negligence any harm caused to the patient's health, then he will not be responsible.[50]

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[45] Ibid. Ibn al-Qayyim
[46] Ibid.
[47] Ibn Mufliḥ, (Shams al-Dīn Abū ʿAbdallāh Muḥammad bin Mufliḥ bin Muḥammad bin Mufraj al-Maqdisī al-Ḥanbalī, died. 763.H), *Al-*Ādāb *al-sharʿīyah wa al-Minaḥ al-Marʿīyah*, Cairo, 1930, vol. 2, p. 474; see also, Ibn al-Qayyim, *the Prophetic Medicine; Al-Tībb al-Nabawʿī.* Abd el-Qader Abd el-Azeez, Dār al-Għadd al-Jadeed, al-Mansūrā, Egypt, 2003, p. 169
[48] Ibid, Ibn al-Qayyim, at, pp. 168-171
[49] Ibid.
[50] Ibid.

Conversely, in case of an emergency, or natural calamity, or any other disaster, such as bomb blast, road accidents etc., physicians are not required to wait for permission, since normally in such situations a number of patients were brought to the hospital for medical treatment. So, most of them are not known to them, and without heirs and guardians. Subsequently in likewise circumstances, it is very difficult for the physicians to take permission from the patients (injured people), or from their heirs and guardians for the purpose of treatment, because, seeking proper permission in an urgent situation might lead to destruction of their lives. Thus, physicians are normally authorized by the state/government in abnormal situation, like as war and etc. Therefore, they are not required to wait for permission in extra ordinary circumstances.

Fourthly): where if a competent physician prescribed wrong medicine, and resultantly it caused any harm to the patient's health or life, then, in such case he will be held responsible. He is required to pay-off the damage he has caused, from his own sources or from the state treasury.[51]

Fifthly): when an ignorant physician treating a patient, and the patient dose not knew that he was unqualified, or if there is a reason to believe that he was a competent, but factually he was not a professional (while the physician knew the facts of his incompetency), and kept treating him. Thus, in such case if he caused any harm, he (the physician) will be held responsible. So, he is required to pay for the damage or loss caused to the patient's health.[52]

Patients Knowingly Allows an Unqualified Physician for Treatment

On the other hand, if any patient knowingly allows an unqualified physician for treatment, so in this case the physician will not be held responsible for the damage caused to the patient's health or life.[53] But a physician must know about the medicine, drugs, and specially the usage of modern medical instruments. It is because advancement is made in the field of biomedical technology, where mostly surgeries and treatments are done with the help of advanced and complex machines, since; they are not restricted only to the conventional methods of medicine. In view of al-Dhahabī: the knowledge of medicine is not limited to the religious (i.e. traditional/conventional) medications only.[54] Rather they

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[51] Ibn al-Qayyim, *the Prophetic Medicine; Al-Tībb al-Nabawʿī.* Abd el-Qader Abd el-Azeez, Dār al-Gḥadd al-Jadeed, al-Mansūrā, Egypt, 2003, pp. 168-171

[52] Ibid.

[53] Ibid.

[54] Al-Dhahabī, *Al-Tībb al-Nabawʿī.* ed. (Shayyīd Jamālī), Cairo, pp. 51-53

physicians are required to pay full attention to the recent developments. However, he (al-Dhahabī) stressed that Muslim physicians have to pay special attention to Prophetic medicine and to his therapeutic instructions, as it is a key towards good health.[55]

Physician's Religion

Questionably, during the course of medical treatment, where patients need physician, so, whether for them professional qualifications were important only? Or whether physician's religious affiliation is also a mandatory thing? Most scholars view that in the context of medical treatment, physician's religious affiliation is not an issue. However, some jurists strongly believe that Muslim should seek a medical treatment from a Muslim physician. For example, Ibn al-Ḥājj al-Mālikī[56] is of the opinion that a Muslim is required to get medical treatment from Muslim physicians only. Thus, he strongly rejects the idea of seeking medical treatment from other non-Muslim physicians; even seeking an advice from a *dhimmī* physician is also not tolerable.[57]

Similarly, Ibn Mufliḥ, viewed that the patient should get those medicaments, which is lawful for them, thus, a Muslim must refrain from such treatment that prevent him from fulfilling his religious obligations. Therefore, he (the patient) is required to desist from taking those medicines prescribed by a *dhimmī*, since he does not aware of the fact that medicine consisted of an illegal compounds is forbidden in *Shariah*. Hence, one may be anxious, that he might have included the substances which are prohibited. However, to him (Ibn Mufliḥ), some Jurists are of the view that if a patient does not find a Muslim physician, then, he can seek medical treatment and advice from a non-Muslin physician.[58]

On the other hand, al-Dhahabī maintained; "it is permissible to seek medical treatment from a non-Muslim physician". But, he (Muslim patient) is required to ignore such an advice/treatment containing unlawful components.[59] Looking towards Ibn al-Qayyim's book; "*the Prophetic medicine 'al-tībb al-nabawī*", we therefore did not find any discussion regarding the physician's religious affiliation. However, he mentions that

[55] Ibid.
[56] Ibn al-Ḥājj al-Mālikī, (Muḥammad bin Muḥammad bin Muḥammad Abū ʿAbdallāh bin al-Ḥājj al-'Abdar ī al-Mālikī, died. 737.H)
[57] Ibn al-Ḥājj al-Mālikī, *Al-Madkhal,* vol. 3, Cairo, 1903, pp. 89-90; see also, Al-'Uthaymīn, *Sharḥ al-Mumti', 'alá Zād al-Mustaqni'*, Dār Ibn al-Jawzī, 1428.H, vol. 4, p. 341
[58] Ibn Mufliḥ, *Al-Ādāb al-shar'īyah wa al-Minaḥ al-Mar'īyah,* Cairo, 1930, vol. 2, p. 474
[59] Al-Dhahabī, *Al-Tībb al-Nabawʿī.* ed. (Shayyīd Jamālī), Cairo, pp. 51-53; see also, Al-'Uthaymīn, *Sharḥ al-Mumti', 'alá Zād al-Mustaqni'*, Dār Ibn al-Jawzī, 1428.H, vol. 4, p. 342

physicians must know about the divine medicine,[60] since ailing person has firm faith in divine medicine.[61]

Opinion-Juris: Balancing Views

Positively, it is strongly recommended that during the course of medical treatment, physician's religion may not be overlooked.[62] For the reason, when the Prophet (peace be upon him) visited Sa'ad (May Allah be pleased him), who was suffering from a heart disease.

According to the Hadith:

عَنْ سَعْدٍ، قَالَ مَرِضْتُ مَرَضًا أَتَانِي رَسُولُ اللَّهِ صلى الله عليه وسلم يَعُودُنِي فَوَضَعَ يَدَهُ بَيْنَ ثَدْيَىَّ حَتَّى وَجَدْتُ بَرْدَهَا عَلَى فُؤَادِي فَقَالَ: " إِنَّكَ رَجُلٌ مَفْئُودٌ ائْتِ الْحَارِثَ بْنَ كَلَدَةَ أَخَا ثَقِيفٍ فَإِنَّهُ رَجُلٌ يَتَطَبَّبُ فَلْيَأْخُذْ سَبْعَ تَمَرَاتٍ مِنْ عَجْوَةِ الْمَدِينَةِ فَلْيَجَأْهُنَّ بِنَوَاهُنَّ ثُمَّ لِيَلُدَّكَ بِهِنَّ۔ [63]

> Sa'ad reported that, "I suffered from an illness, the Messenger of Allah (peace be upon him) came to me, he (the Prophet) placed his hand in between on my chest, thus, I felt its coolness in my heart, so he (the Prophet) said: "you are (a man) suffering from heart sickness, go to al-Hārith bin Kalādah; brother of Saqīf, because he is a man who gives medical treatment, so he (al-Hārith) will take seven dates; '*ajwah* of Medina, and will grind it with their kernels, and then put it into your mouth"

So He (the Prophet) advised him to go to al-Hārith bin Kalādah; although a non-Muslim, but he was an expert in medical treatment. Ibn Malak al-Ḥanafī maintained; al-Hārith bin Kalādah al-Saqafī was not a Muslim, since he (al-Hārith) died at the beginning of Islam. Thus, this *ḥadīth* expressly indicates the permissibility of consultation with an infidel (non-Muslim) physician.[64] Therefore, if a non-Muslim physician is dully qualified

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[60] Ibn al-Qayyim, *the Prophetic Medicine; Al-Tībb al-Nabawʿī.* Abd el-Qader Abd el-Azeez, Dār al-Gḥadd al-Jadeed, al-Mansūrā, Egypt, 2003, pp. 251-268

[61] Ibid, at, p. 174

[62] In the context of medical ethics, see, Pakistan Medical and Dental Council, "*Code of Ethics: of Practice for Medical and Dental Practitioner*", part 2, rule no. 6, p. 3; however for Islamic point view, it is necessary to see the discussion: *physician religion*, and also *balancing views*.

[63] Abū Dāwūd, *Sunan Abī Dāwūd*, in book reference: book no. 29, chapter no. 12, ḥadīth no. 21, English translation: book no. 28, ḥadīth no. 3866

[64] Ibn Malak al-Ḥanafī, *Sharḥ Maṣābīḥ al-Sunnah lil-imām al-Baghawī*, Idāra al-Saqāfah al-Islāmīyah, 2012, vol. 4, p. 567.

and known as a medical specialist, then seeking medical treatment and consultation from him is not an issue, however if he is a trustworthy.[65]

Arguably, as regard to the trust-ability of a non-Muslim; a textual evidence let us to mark that the Messenger of Allah (peace be upon him) acted on one of the infidels opinion, due to his trust. And that is why the Prophet (peace be upon him) hired a man who was a non-Muslim (known as; ‘Abdullah bni Arayqat) from a tribe of *Banī al-Dīl*, in order to guide him on the road from Mecca to Medina.

According to the Hadith:

عَائِشَةَ .رضى الله عنها .زَوْجَ النَّبِيِّ صلى الله عليه وسلم قَالَتْ وَاسْتَأْجَرَ رَسُولُ اللَّهِ صلى الله عليه وسلم وَأَبُو بَكْرٍ رَجُلاً مِنْ بَنِي الدِّيلِ، هَادِيًا خِرِّيتًا وَهْوَ عَلَى دِينِ كُفَّارِ قُرَيْشٍ، فَدَفَعَا إِلَيْهِ رَاحِلَتَيْهِمَا، وَوَاعَدَاهُ غَارَ ثَوْرٍ بَعْدَ ثَلاَثِ لَيَالٍ بِرَاحِلَتَيْهِمَا صُبْحَ ثَلاَثٍ۔[66]

“It was narrated from ‘Ā’isha (May Allah be please with her); wife of the Messenger (peace be upon him) said: “Allah’s Messenger (peace be upon him) and Abū Bakr hired a man from the tribe of *Banī al-Dīl* as an expert/guide who was a pagan (follower of the religion of the pagans of *Quraish*), the Prophet (peace be upon him) and Abū Bakr gave him their two riding camels and took a promise from him to bring their riding camels in the morning of the third day to the cave of *Thaūr*.”

However, it was presumed to be very hazardous/risky decision, to rely on the persuasion of an infidel, because *Quraish* of Mecca proclaimed an award of two hundred camels for those who grab the Prophet (peace be upon him) and Abū Bakr (May Allah be pleased with him).[67]

Despite of the fact, the Prophet Muhammad (peace be upon him) when saw that he (the infidel guide) was a faithful, trusted and a reliable man, then he hired him to guide them towards the road. Thus, the Prophetic reliance upon an unbeliever shows that a non-Muslim can be relied if he is trustworthy. Hence, in the same way if a non-Muslim physician is

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[65] *Fatāwá al-Muta‘alliqah bil-Tibb wa-Aḥkām al-Maraḍ; Min Fatāwá Muḥammad Āl al-Shaykh, ‘Abd al-‘Azīz bin Bāz*, compiled by, Ṣāliḥ bin Faūzān al-Faūzān, Idāra al-Bahūth al-‘Ilmīyah, wa al-Īftāh, 1424, pp. 347-348.

[66] Al-Bukhārī*, Ṣaḥīḥ al Bukhārī*, in book reference: book no. 37, chapter no. 4, ḥadīth no. 5, English translation: vol. no. 3, book no. 36, ḥadīth no. 465

[67] Al-‘Uthaymīn, *Sharḥ al-Mumti‘, ‘alá Zād al-Mustaqni‘*, Dār Ibn al-Jawzī, 1428.H, vol. 4, p. 342, and vol. 10, p. 51; see also, *Fatāwá al-Muta‘alliqah bil-Tibb wa-Aḥkām al-Maraḍ; Min Fatāwá Muḥammad Āl al-Shaykh, ‘Abd al-‘Azīz bin Bāz*, compiled by, Ṣāliḥ bin Faūzān al-Faūzān, Idāra al-Bahūth al-‘Ilmīyah, wa al-Īftāh, 1424, pp. 347-348

qualified and known as an expert of the field, then his religion may not be overlooked. Because there is nothing wrong to seek medical treatment from a non-Muslim expert.[68]

In addition, non-Muslim physicians maintain their hospitals and medical centers better than some of the Muslims, not for the sake of divine reward, but to keep their standards high, and preserve their reputation and honor. Consequently, their genuine advice may also be acted upon; likewise, if a non-Muslim physician suggests a patient that fasting will cause an increase in his illness, then delaying fast is mandatory to avoid greater harm.[69]

Conclusion

Consequently, the issue of medical treatment debated in Islamic law and jurisprudence. Jurists of Islam; like, al- Ghazālī, Ibn Taymiyyah, and some other spiritual clerics (*sūfī's*) were of the view that; "it is better for a sick person to live without medical treatment, since it is a sign of piousness, and also a humble acceptance of Allah's appreciation". Basically, their viewpoint is based on the Prophetic traditions in which the Prophet Muhammad (peace be upon him) termed illness brings purity/piousness. Similarly, al-Qardāwī stated: "some of the companions were also reported that they were not seeking any medical treatment at the time when they were sick/ill". However, he was of the view, that 'medical treatment is an obligation if one's life is in danger', since preservation and protection of life is one of the primary objectives of *Shariah*. Moreover, seeking medical treatment is highly encouraged in Islam, and an ill person is supposed to pursue medical treatment, because Allah almighty has made both the illness and the cure. Therefore, this research paper resolves that, in fact, al-Ghazālī when talks about medication in his book: *ihyā' 'ulūm al-dīn,* maintained; "Allah almighty had arranged all causes and had established his custom regarding them". So, he (al-Ghazālī) concludes his discussion signifying that; "medicaments were useful, and also permissible and compatible with *tawakkūl*", as Ibn al-Jawzī stated. Correspondingly, the final arguments of al-Ghazālī marked that; "there is nothing wrong in using medicaments, but however, it should not be forgotten that drugs/medicine itself having no inherent curing qualities, rather the cure/healing rests in Allah's hand who caused the drugs to have the desired effect each time they were applied". Equally, Islam does approve necessary measures to sustain sound and good health, since it is considered a part of one's obligations in view of 'Aynī. Thus its sustenance senses the

[68] Ibid.
[69] Ibid.

subjects to avoid from undue pains and sufferings. For this purpose medications and medical treatment is measured a recognized mode in Islam. Likewise, it is legal for a Muslim to get treatment from a non-Muslim physician, and it is strongly recommended that during the course of medical treatment, physician’s religion may not be overlooked. As the Prophet (peace be upon him) advised Sa’ad (May Allah be pleased him), who was suffering from a heart disease, to go to al-Hārith bin Kalādah; although a non-Muslim, but he was an expert in medical treatment. Additionally, the Prophetic reliance upon an unbeliever; known as ‘Abdullah bni Arayqat from a tribe of *Banī al-Dīl*, to guide him on the road from Mecca to Medina, shows that a non-Muslim can be relied if he is trustworthy. Hence, in the same way if a non-Muslim physician is qualified and known as an expert of the field, then his religion may not be overlooked. Because there is nothing wrong to seek medical treatment from a non-Muslim expert.